

¹ 5 U.S.C. § 8101 *et seq.*

work break walking in the parking lot to check the oil in his car and felt knee pain. He notified his supervisor, stopped work and sought medical treatment on June 18, 2010.

In a June 18, 2010 emergency room report, Dr. Michael Ginsburg, Board-certified in emergency medicine, reported that appellant felt right knee pain when he stepped from the curb to the gravel. He diagnosed right knee pain.

In a June 18, 2010 diagnostic test of the right knee, Dr. Marshall S. Carlin, an osteopath, reported that frontal and lateral projections of the right knee demonstrated no fracture, misalignment, degenerative change or soft tissue abnormality.

In a June 22, 2010 narrative statement, Mark Jurezak, a post office supervisor, reported that appellant did not fall and that his knees gave out. He helped appellant back to the building. By letter dated June 22, 2010, the employing establishment controverted the claim. It also noted that appellant had a previous right knee injury.

In a June 23, 2010 discharge report, Dr. Ginsburg advised that appellant was treated for right knee pain.

By letter dated July 2, 2010, OWCP requested additional factual information from the employing establishment, namely, whether the area appellant was injured was federally owned, operated or maintained.

By letter dated July 2, 2010, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and asked that he respond to the provided questions within 30 days.

In a July 7, 2010 progress note, Dr. Anna Hennon, a treating physician, reported that appellant complained of a boil on the right inner thigh. She also noted that he was seen on June 23, 2010 for right knee pain and that an x-ray of his right knee was nonrevealing.

In a July 12, 2010 narrative statement, appellant reported that his employment as a custodian entailed cleaning and mopping the lobby and work areas in the post office. He cleaned from 6:00 a.m. to 7:30 a.m. on Fridays, after which he checked postal vehicles for oil and windshield wiper fluid. Once appellant finished his duties at 8:15 a.m., he proceeded to walk to his vehicle to check his oil when he felt right knee pain. He noted that he did not have a previous right knee condition.

By decision dated August 5, 2010, OWCP denied appellant's claim finding that he did not establish that the June 18, 2010 incident occurred as alleged.

By letter dated October 27, 2010, appellant requested reconsideration of OWCP's decision. He stated that his work hours are 6:00 a.m. to 2:30 p.m. from Tuesday through Saturday. On June 18, 2010 appellant finished checking the postal vehicles' oil and windshield wiper fluid when he went on his break at 8:15 a.m. to check on his own truck and experienced knee pain. His shift did not end until 2:30 p.m.

In an August 9, 2010 radiology report, Dr. Ronald D. Lew, a Board-certified diagnostic radiologist, reported that the magnetic resonance imaging (MRI) scan of appellant's right knee showed a questionable tear of the posterior horn of the lateral meniscus and degenerative change of the medial meniscus.

By decision dated January 25, 2011, OWCP affirmed its August 5, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA³ and that an injury was sustained in the performance of duty.⁴ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.⁶ Once an employee establishes that he sustained an injury in the performance of duty, he has the burden of proof to establish that any subsequent medical condition or disability for work, for which he claims compensation is causally related to the accepted injury.⁷

ANALYSIS

The Board finds that appellant failed to establish that he sustained an injury while in the performance of duty on June 18, 2010.

Appellant must establish all of the elements of his claim in order to prevail. He must prove his employment, the time, place and manner of injury, a resulting personal injury and that his injury arose in the performance of duty. Appellant alleged that on June 18, 2010 he was walking in the parking lot when he experienced right knee pain.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *James E. Chadden Sr.*, 40 ECAB 312 (1988).

⁵ *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁶ See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). See *Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

Appellant has not provided sufficient detail to establish that the incident occurred in the manner alleged.⁸ He failed to adequately describe the circumstances of his injury, how he injured his knee and whether it was related in some way to his cleaning duties. Appellant failed to present evidence of the specific mechanism of injury, as required in a claim for traumatic injury, and merely stated that he experienced pain when walking.⁹

Appellant has clearly described the time and place of the incident and there is no evidence to the contrary but he has not established that an injury occurred. Moreover, the employing establishment controverted the claim stating that he had a prior right knee injury which might have been the cause of his more recent complaints.

Appellant did not establish a firm medical diagnosis of his knee symptoms. In a June 18, 2010 medical report, Dr. Ginsburg noted that appellant complained of right knee pain from stepping onto gravel from the curb. Dr. Carlin reported that the frontal and lateral projections of appellant's right knee demonstrated no fracture, degenerative change or soft tissue abnormality. In his August 9, 2010 radiology report, Dr. Lew noted degenerative change of the medial meniscus. The diagnosis of right knee pain is a description of a symptom rather than a diagnosis of a medical condition.¹⁰ None of the physician's reports provide a firm medical diagnosis or support a specific mechanism of injury as required in a traumatic injury claim.¹¹

In the instant case, the record lacks evidence establishing the factual element of appellant's claim, namely, that a claimed traumatic event caused him medical injury. The record also lacks rationalized medical evidence to identify and explain an injury. An award of compensation may not be based on surmise, conjecture or speculation. Because appellant did not submit sufficient evidence demonstrating the alleged June 18, 2010 incident occurred as alleged, OWCP properly denied his claim.¹²

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a right knee injury on June 18, 2010 in the performance of duty.

⁸ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁹ *Paul Foster*, 56 ECAB 1943 (2004).

¹⁰ The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹¹ *Supra* note 8.

¹² OWCP did not evaluate whether appellant's incident occurred within the performance of his duty. The factual question is, therefore, not before the Board. Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board